

ASSEMBLY BILL

No. 2392

Introduced by Assembly Member Gatto

February 21, 2014

An act to amend Sections 42300, 42301, 42310, 42310.3, 42320, 42321, 42322, 42323, 42325, 42326, 42327, and 42330 of, and to repeal Sections 42310.1 and 42310.2 of, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2392, as introduced, Gatto. Recycling: plastic containers.

(1) The California Integrated Waste Management Act of 1989 requires rigid plastic packaging containers that are sold or offered for sale in this state to meet, on average, one of specified criteria and defines terms for purposes of those requirements. One criteria that a product-associated or a single resin type rigid plastic packaging container may meet to satisfy this requirement is that it have a recycling rate of 45%. The Department of Resources Recycling and Recovery is required to enforce the act's plastic packaging container requirements and a violation of these requirements is a crime.

This bill would increase the recycling rate that a product-associated, or single resin type, rigid plastic packaging container is required to meet under this criteria to 75%, thereby imposing a state-mandated local program by changing the definition of a crime. The bill would also delete obsolete provisions and make conforming and nonsubstantive changes.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 42300 of the Public Resources Code is
2 amended to read:
3 42300. The Legislature finds and declares all of the following:
4 (a) Recycling rigid plastic packaging containers saves landfill
5 space, reduces energy consumption, and preserves natural
6 resources.
7 (b) The California Integrated Waste Management Act of 1989
8 requires cities and counties to reduce the amount of waste disposed
9 in landfills by 50 percent by the end of the decade through source
10 reduction, recycling, and composting.
11 (c) *The Legislature has established a statewide goal that 75*
12 *percent of solid waste annually generated in this state be source*
13 *reduced, recycled, or composted by the year 2020. It is the intent*
14 *of the Legislature in enacting the act that added this subdivision*
15 *in the 2013–14 Regular Session of the Legislature to update this*
16 *chapter to meet that new target recycling goal.*
17 (e)
18 (d) Rigid plastic packaging containers represent a significant
19 component of the solid waste generated in the state.
20 (d)
21 (e) In order for recycling in the state to be successful, it is critical
22 that stable, in-state markets be developed for material separately
23 collected from the waste stream and processed for recycling.
24 (e)
25 (f) ~~As of the effective date of this chapter January 1, 1994,~~
26 ~~curbside collection of recyclables is~~ was available to nearly 20
27 percent of the state's residents. In order to expand the variety of
28 materials collected in these programs, including all rigid plastic
29 packaging containers, it is essential that stable markets exist for
30 the plastic materials collected.
31 (f)
32 (g) The state has required several types of products to use
33 increasing levels of postconsumer recycled material in their

1 manufacture, including newsprint, glass containers, and plastic
2 trash bags.

3 ~~(g)~~

4 (h) Some of the nation's largest consumer product manufacturers
5 have announced plans to require, or are currently requiring, their
6 plastic packaging suppliers to provide them with containers
7 comprised of increasing levels of postconsumer recycled materials,
8 demonstrating that the technology is already available to use
9 recycled material to make new plastic packaging containers.
10 However, many businesses continue to purchase packaging
11 materials made from 100 percent virgin plastic and to sell them in
12 the state.

13 ~~(h)~~

14 (i) The food and consumer products industries are manufacturing
15 safe products and packaging using plastic materials, some of which
16 use less raw material than other packaging materials through source
17 reduction and the reuse and recycling of used plastic materials.

18 ~~(i)~~

19 (j) The Legislature recognizes that the need to reduce the amount
20 of solid waste generated by food products must be balanced with
21 the need to package those products so that they are resistant to
22 tampering, damage, and spoilage.

23 ~~(j)~~

24 (k) It is, therefore, the intent of the Legislature to spur markets
25 for plastic materials collected for recycling by requiring
26 manufacturers to utilize increasing amounts of postconsumer
27 recycled material in their rigid plastic packaging containers only
28 if the use of that material does not present an unreasonable risk to
29 the public health and safety, and to achieve high recycling rates
30 for these rigid plastic packaging containers.

31 SEC. 2. Section 42301 of the Public Resources Code is
32 amended to read:

33 42301. For purposes of this chapter, the following definitions
34 apply:

35 (a) "Container manufacturer" means a company or a successor
36 company that sells any rigid plastic packaging container subject
37 to this chapter to a manufacturer that sells or offers for sale in this
38 state any product packaged in that container.

39 (b) "Curbside collection program" means a recycling program
40 that collects materials set out by households for collection at the

1 curb at intervals not less than every two weeks. “Curbside
2 collection program” does not include redemption centers, buyback
3 locations, drop-off programs, material recovery facilities, or plastic
4 recovery facilities.

5 (c) “Refillable package” means a rigid plastic packaging
6 container that the ~~board~~ *department* determines is routinely returned
7 to and refilled by the product manufacturer at least five times with
8 the original product contained by the package.

9 (d) “Reusable package” means a rigid plastic packaging
10 container that the ~~board~~ *department* determines is routinely reused
11 by consumers at least five times to store the original product
12 contained by the package.

13 (e) “Manufacturer” means the producer or generator of a product
14 that is sold or offered for sale in the state and that is stored inside
15 of a rigid plastic packaging container.

16 (f) “Rigid plastic packaging container” means any plastic
17 package having a relatively inflexible finite shape or form, with a
18 minimum capacity of eight fluid ounces or its equivalent volume
19 and a maximum capacity of five fluid gallons or its equivalent
20 volume, that is capable of maintaining its shape while holding
21 other products, including, but not limited to, bottles, cartons, and
22 other receptacles, for sale or distribution in the state.

23 (g) “Postconsumer material” means a material that would
24 otherwise be destined for solid waste disposal, having completed
25 its intended end use and product lifecycle. Postconsumer material
26 does not include materials and byproducts generated from, and
27 commonly reused within, an original manufacturing and fabrication
28 process.

29 (h) “Recycled” means a product or material that has been reused
30 in the production of another product and has been diverted from
31 disposal in a landfill.

32 (i) “Recycling rate” means the proportion, as measured by
33 weight, volume, or number, of a rigid plastic packaging container
34 sold or offered for sale in the state that is being recycled in a given
35 calendar year, that is one of the following:

36 (1) A particular type of rigid plastic packaging container, such
37 as a milk jug, soft drink container, or detergent bottle.

38 (2) A product-associated rigid plastic packaging container.

39 (3) A single resin type, as specified in Section 18015, of rigid
40 plastic packaging container, notwithstanding the exemption of that

1 container from this chapter pursuant to subdivision (b), (c), or (d)
2 of Section 42340.

3 (j) (1) “Source reduced container” means ~~either of the~~
4 ~~following: a rigid plastic container for which the container weight~~
5 ~~per unit or number of product uses has been reduced by 10 percent~~
6 ~~when compared with any one of the following:~~

7 ~~(A) A rigid plastic packaging container for which the~~
8 ~~manufacturer seeks compliance as of January 1, 1995, whose~~
9 ~~package weight per unit or use of product has been reduced by 10~~
10 ~~percent when compared with the packaging used for that product~~
11 ~~by the manufacturer from January 1, 1990, to December 31, 1994.~~

12 ~~(B) A rigid plastic container for which the manufacturer seeks~~
13 ~~compliance after January 1, 1995, whose package weight per unit~~
14 ~~or use of product has been reduced by 10 percent when compared~~
15 ~~with one of the following:~~

16 ~~(i)~~

17 ~~(A) The rigid plastic packaging container used for the product~~
18 ~~by the manufacturer on January 1, 1995.~~

19 ~~(ii)~~

20 ~~(B) The rigid plastic packaging container used for that product~~
21 ~~by the manufacturer over the course of the first full year of~~
22 ~~commerce in this state.~~

23 ~~(iii)~~

24 ~~(C) The packaging used in commerce that same year for similar~~
25 ~~products whose containers have not been considered source~~
26 ~~reduced.~~

27 (2) A rigid plastic packaging container is not a source reduced
28 container for the purposes of this chapter if the packaging reduction
29 was achieved by any of the following:

30 (A) Substituting a different material type for a material that
31 previously constituted the principal material of the container.

32 (B) Increasing a container’s weight per unit or use of product
33 after January 1, 1991.

34 (C) Packaging changes that adversely affect the potential for
35 the rigid plastic packaging container to be recycled or to be made
36 of postconsumer material.

37 (k) “Product-associated rigid plastic packaging container” means
38 a brand-specific, rigid plastic packaging line that may have one or
39 more sizes, shapes, or designs and that is used in conjunction with
40 a particular generic product line.

(l) "PETE" means polyethylene terephthalate as specified in subdivision (a) of Section 18015.

(m) "HDPE" means high-density polyethylene.

SEC. 3. Section 42310 of the Public Resources Code is amended to read:

42310. Except as otherwise provided in this chapter, every rigid plastic packaging container sold or offered for sale in this state shall, on average, meet one of the following criteria:

(a) Be made from 25 percent postconsumer material.

(b) Have a recycling rate of ~~45~~ 75 percent if it is a product-associated rigid plastic packaging container or a single resin type of rigid plastic packaging container, as demonstrated to the ~~board~~ department by the product maker, container manufacturer, or other entity. The ~~board~~ department may take appropriate action to verify the demonstration, but the ~~board~~ department is not required to expend state funds to conduct a survey or calculate the rate.

(c) Be a reusable package or a refillable package.

(d) Be a source reduced container.

(e) Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years.

SEC. 4. Section 42310.1 of the Public Resources Code is repealed.

~~42310.1. (a) Until January 1, 1997, the criteria specified in Section 42310 shall not apply to any rigid plastic packaging container that is manufactured for use with food or cosmetics, as defined in subdivisions (f) and (i) of Section 321 of Title 21 of the United States Code.~~

~~(b) Notwithstanding subdivision (a), rigid plastic packaging containers actually recycled shall be included in calculating the recycling rate pursuant to subdivision (b) or (c) of Section 42310.~~

~~(c) Every manufacturer of a product packaged in a rigid plastic packaging container described in subdivision (a), which is not in compliance with Section 42310, that is exempt from the criteria specified in Section 42310 pursuant to subdivision (a), shall do both of the following:~~

~~(1) On or before December 1, 1995, the manufacturer shall submit a report to the board which demonstrates that the manufacturer is taking, and will continue to take, all feasible actions consistent with Section 42310 to ensure the reduction,~~

1 ~~recycling, or reuse of the rigid plastic packaging containers~~
2 ~~described in subdivision (a) and the development and expansion~~
3 ~~of markets for rigid plastic packaging containers. Those actions~~
4 ~~may include, but are not limited to, all of the following:~~

5 ~~(A) The use of postconsumer recycled plastic in rigid plastic~~
6 ~~packaging containers sold in this state.~~

7 ~~(B) The use of postconsumer recycled plastic in other packaging~~
8 ~~materials sold or manufactured in this state.~~

9 ~~(C) The use of postconsumer recycled plastic in other products~~
10 ~~sold or manufactured in this state.~~

11 ~~(D) Arranging for the use of postconsumer recycled plastic~~
12 ~~collected for recycling in this state in the manufacture of nonrigid~~
13 ~~plastic packaging container products or packaging of another entity.~~

14 ~~(E) The procurement of products containing postconsumer~~
15 ~~recycled plastic, including, but not limited to, trash bags, trash~~
16 ~~containers, pallets, carpeting, slip sheets, and shrink wrap.~~

17 ~~(F) The demonstration of financial investment in recycled plastic~~
18 ~~collecting, processing, and remanufacturing activities in the state.~~

19 ~~(2) On or before January 1, 1996, every manufacturer of rigid~~
20 ~~plastic packaging containers shall, for any rigid plastic packaging~~
21 ~~container that is exempt from, and not in compliance with, the~~
22 ~~criteria specified in Section 42310 pursuant to subdivision (a);~~
23 ~~diligently seek one or more “nonobjection letters” from the United~~
24 ~~States Food and Drug Administration which will permit the~~
25 ~~manufacturer of rigid plastic packaging containers to use recycled~~
26 ~~plastic in the manufacture of the rigid plastic packaging containers~~
27 ~~described in subdivision (a).~~

28 SEC. 5. Section 42310.2 of the Public Resources Code is
29 repealed.

30 ~~42310.2. (a) On or before July 1, 1994, as part of the~~
31 ~~regulations required to be adopted pursuant to Section 42325, the~~
32 ~~board shall adopt regulations to carry out the requirements of~~
33 ~~paragraph (1) of subdivision (c) of Section 42310.1. In adopting~~
34 ~~regulations pursuant to this section, the board shall make every~~
35 ~~effort to limit paperwork and information to only those matters~~
36 ~~that are needed for the board to determine if manufacturers are~~
37 ~~taking all feasible actions to ensure the reduction, recycling, or~~
38 ~~reuse of the rigid plastic packaging containers described in~~
39 ~~subdivision (a) of Section 42310.1, and the development and~~
40 ~~expansion of markets for rigid plastic packaging containers.~~

1 (b) ~~On or before February 1, 1996, the board shall review, and~~
2 ~~approve or disapprove, the reports required pursuant to paragraph~~
3 ~~(1) of subdivision (c) of Section 42310.1. If a report is not~~
4 ~~submitted pursuant to a schedule established by the board, or, if,~~
5 ~~based upon the report, the board determines that a manufacturer~~
6 ~~has not taken all feasible actions to ensure the reduction, recycling,~~
7 ~~or reuse of the containers and the development and expansion of~~
8 ~~markets for rigid plastic packaging containers, the board may take~~
9 ~~one of the following actions, as selected by the manufacturer:~~

10 ~~(1) Require the manufacturer to take additional actions,~~
11 ~~including, but not limited to, one or more of the measures described~~
12 ~~in paragraph (1) of subdivision (c) of Section 42310.1, to ensure~~
13 ~~that the manufacturer is taking, and will continue to take, all~~
14 ~~feasible actions to ensure the reduction, recycling, or reuse of the~~
15 ~~containers and the development and expansion of markets for rigid~~
16 ~~plastic packaging containers.~~

17 ~~(2) Impose a civil penalty of up to one hundred thousand dollars~~
18 ~~(\$100,000) pursuant to Section 42322. In imposing monetary~~
19 ~~penalties pursuant to this paragraph, the board shall take into~~
20 ~~consideration all of the following factors:~~

21 ~~(A) The size and net worth of the manufacturer.~~

22 ~~(B) The impact of the violation on the overall objectives of this~~
23 ~~chapter.~~

24 ~~(C) The severity of the violation. A penalty imposed pursuant~~
25 ~~to this paragraph shall not be required to be paid by a manufacturer~~
26 ~~before January 1, 1997.~~

27 ~~(e) If the board determines that the conditions in paragraphs (1)~~
28 ~~and (2) are met, the board shall enter into a contract, or other legally~~
29 ~~binding agreement, with one or more trade associations~~
30 ~~representing manufacturers of resin, manufacturers of rigid plastic~~
31 ~~packaging containers, or manufacturers of products packaged in~~
32 ~~rigid plastic packaging containers subject to this section and~~
33 ~~Section 42310.1. The agreement shall allow the trade association,~~
34 ~~in lieu of those individual manufacturers in the trade association~~
35 ~~who elect to be a party to the contract or agreement, to submit the~~
36 ~~report required pursuant to paragraph (1) of subdivision (c) of~~
37 ~~Section 42310.1 and to implement the actions identified in the~~
38 ~~report. The board shall enter into the agreement only if both of the~~
39 ~~following conditions exist:~~

1 ~~(1) The agreement ensures that the report will contain sufficient~~
2 ~~information that otherwise would be required to be submitted by~~
3 ~~individual manufacturers pursuant to Section 42310.1, and any~~
4 ~~other information that is necessary and directly related to the~~
5 ~~board's ability to comply with this section.~~

6 ~~(2) The agreement ensures that each manufacturer that elects~~
7 ~~to be a party to the agreement and that is a member of the trade~~
8 ~~association that submits the report shall be liable for the full amount~~
9 ~~of any civil penalties that may be imposed or shall comply with~~
10 ~~any requirement imposed by the board pursuant to paragraph (1)~~
11 ~~of subdivision (b), as selected by the manufacturer. A manufacturer~~
12 ~~subject to this paragraph shall not be liable for a civil penalty~~
13 ~~greater than one hundred thousand dollars (\$100,000), regardless~~
14 ~~of the number of trade associations of which the manufacturer is~~
15 ~~a member.~~

16 ~~(d) Notwithstanding any other provision of this section, a trade~~
17 ~~association representing resin manufacturers shall be responsible~~
18 ~~for submitting an additional report as provided pursuant to~~
19 ~~paragraph (1) of subdivision (c) of Section 42310.1. The resin~~
20 ~~manufacturer's trade association is subject to the review, penalties,~~
21 ~~and sanctions specified in paragraphs (1) and (2) of subdivision~~
22 ~~(b). No member of the resin manufacturer's trade association is~~
23 ~~liable for penalties and sanctions set forth in paragraph (1) or (2)~~
24 ~~of subdivision (b) pursuant to this subdivision if that member~~
25 ~~would not otherwise be subject to those penalties and sanctions.~~

26 ~~(e) For the purposes of subdivision (b) and paragraph (1) of~~
27 ~~subdivision (c) of Section 42310.1, "feasible" means capable of~~
28 ~~being accomplished in a successful manner within a reasonable~~
29 ~~period of time, taking into account economic, environmental,~~
30 ~~social, and technological factors.~~

31 ~~(f) For purposes of Section 42310.1 and this section regarding~~
32 ~~all reporting, compliance, and penalty obligations, "manufacturer"~~
33 ~~includes all subsidiaries and affiliates.~~

34 SEC. 6. Section 42310.3 of the Public Resources Code is
35 amended to read:

36 42310.3. (a) Notwithstanding Section 42310, a manufacturer
37 is in compliance with this chapter if the manufacturer demonstrates
38 through its own actions, or the actions of another company under
39 the same corporate ownership, that one of the following actions
40 were taken during the same period for which the manufacturer is

1 subject to this chapter, with regard to a rigid plastic packaging
2 container that stores the manufacturer's product that is sold or
3 intended for sale in this state:

4 (1) The manufacturer, or another company under the same
5 corporate ownership, consumed postconsumer material generated
6 in the state in the manufacture of a rigid plastic packaging container
7 subject to Section 42310, or a rigid plastic packaging container or
8 other plastic products or plastic packaging not subject to that
9 section, and that is equivalent to, or exceeds the postconsumer
10 material that the rigid plastic packaging container is otherwise
11 required to contain, as specified in subdivision (a) of Section
12 42310.

13 (2) The manufacturer, or any company under the same corporate
14 ownership, arranged by contractual agreement for the purchase
15 and consumption of postconsumer material generated in the state
16 and exported to another state for the manufacture of a rigid plastic
17 packaging container subject to Section 42310, or a rigid plastic
18 packaging container or other plastic products or plastic packaging
19 not subject to that section that is equivalent to, or exceeds the
20 postconsumer material that the rigid plastic packaging container
21 is otherwise required to contain, as specified in subdivision (a) of
22 Section 42310.

23 (b) The ~~board~~ *department* shall determine the manner of
24 demonstrating compliance with this section.

25 SEC. 7. Section 42320 of the Public Resources Code is
26 amended to read:

27 42320. Any entity required to make a certification pursuant to
28 this chapter may be audited by the ~~board~~ *department*.

29 SEC. 8. Section 42321 of the Public Resources Code is
30 amended to read:

31 42321. If any entity provides the ~~board~~ *department* with a false
32 or misleading certificate pursuant to this chapter, the ~~board~~
33 *department*, within 30 days of making this determination, shall
34 refer the provider of the false or misleading certificate to the
35 Attorney General for prosecution for fraud.

36 SEC. 9. Section 42322 of the Public Resources Code is
37 amended to read:

38 42322. (a) Any violation of this chapter is a public offense
39 punishable by a fine of not more than one hundred thousand dollars
40 (\$100,000).

1 (b) In addition to the penalty specified under subdivision (a),
2 any violation of this chapter may be subject to a civil penalty
3 assessed by the ~~board~~ *department* of not more than fifty thousand
4 dollars (\$50,000) for each violation, pursuant to a notice and
5 hearing procedure that conforms with Chapter 5 (commencing
6 with Section 11500) of Part 1 of Division 3 of Title 2 of the
7 Government Code.

8 (c) The total annual fines or penalties assessed upon a violator
9 of this chapter shall not exceed one hundred thousand dollars
10 (\$100,000).

11 (d) The ~~board~~ *department* shall annually publish a list by July
12 1 setting forth any fines or penalties that have been levied against
13 a violator of this chapter in the preceding calendar year, for failure
14 to comply with the requirements of this chapter.

15 (e) The ~~board~~ *department* shall deposit all penalties or fines
16 paid pursuant to this section into the Rigid Container Account,
17 which is hereby created in the Integrated Waste Management Fund
18 in the State Treasury. The moneys deposited in the Rigid Container
19 Account shall be expended by the ~~board~~ *department*, upon
20 appropriation by the Legislature, to assist local governmental
21 agencies to develop and implement collection and processing
22 systems for the recycling of materials that are subject to this
23 chapter, for the development of markets for these materials, and
24 for the ~~board~~ *department's* costs of implementing this chapter.

25 SEC. 10. Section 42323 of the Public Resources Code is
26 amended to read:

27 42323. Proprietary information included in part of a report or
28 certificate submitted to the ~~board~~ *department* pursuant to this
29 chapter shall not be made available to the general public.

30 SEC. 11. Section 42325 of the Public Resources Code is
31 amended to read:

32 42325. The ~~board~~ *department* shall adopt regulations to
33 implement this chapter. These regulations shall include, but shall
34 not be limited to, all of the following:

35 (a) Procedures for certifying compliance with Article 2
36 (commencing with Section 42310), including a requirement that
37 product manufacturers include in their specifications for rigid
38 plastic packaging containers a requirement that the packaging
39 manufacturer certify that the rigid plastic packaging containers
40 comply with this chapter.

(b) Procedures for considering and granting waivers pursuant to Article 4 (commencing with Section 42330).

SEC. 12. Section 42326 of the Public Resources Code is amended to read:

42326. In developing the regulations required by Section 42325, the ~~board~~ department shall consult with representatives of the manufacturers affected by this chapter, with representatives of environmental organizations, and other interested parties.

SEC. 13. Section 42327 of the Public Resources Code is amended to read:

42327. The ~~board~~ department may expend funds from the Integrated Waste Management Account to implement this chapter, upon appropriation by the Legislature.

SEC. 14. Section 42330 of the Public Resources Code is amended to read:

42330. (a) The ~~board~~ department shall grant a waiver from the postconsumer material content requirement of subdivision (a) of Section 42310, but not from any other requirement of Section 42310, if the ~~board~~ department finds one or more of the following:

(1) The rigid plastic packaging containers cannot meet the postconsumer material requirements of subdivision (a) of Section 42310 and remain in compliance with applicable provisions of regulations adopted by the Food and Drug Administration or other state or federal laws or regulations.

(2) It is technologically infeasible to use rigid plastic packaging containers that achieve the postconsumer material requirement of subdivision (a) of Section 42310.

(b) The ~~board~~ department shall grant a waiver from all of the requirements of Section 42310 if the ~~board~~ department finds ~~either of the following~~:

~~(1) Less than 60 percent of the single-family homes in the state on and after January 1, 1994, have curbside collection programs that include beverage container recycling.~~

~~(2) At least 50 percent, by number, of a manufacturer's rigid plastic packaging containers sold or offered for sale in the state in the current calendar year achieve the postconsumer material requirements of subdivision (a) of Section 42310 and all of the manufacturer's rigid plastic packaging containers will comply with the requirements of Section 42310 on or before January 1, 1996.~~

1 (c) The ~~board~~ *department* shall grant a one-year waiver from
2 all of the requirements of Section 42310 for products packaged in
3 rigid plastic packaging containers that are introduced and sold in
4 this state after January 1, 1995.

5 SEC. 15. No reimbursement is required by this act pursuant
6 to Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.